

the Hawai i State Bar, and any replies thereto, to the supreme court for its review and approval.

([8]9) To receive from the Bar all funds collected by the Bar for the Board, and to have exclusive control and responsibility over all financial transactions; and to develop and maintain appropriate accounting records showing the receipt and disposition of those funds, which records shall be subject to audit as directed by the supreme court.

2.7. Procedure.

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(a) Investigation. All investigations, whether upon complaint or otherwise, shall be conducted under the supervision of Counsel. Each investigation shall be confined to the facts of the grievance and matters reasonably related thereto that could be violations of the Hawai i Rules of Professional Conduct or other Rules of the Supreme Court that regulate the practice of law. Upon motion, an attorney subject to an investigation may seek protective orders in the first instance from the Board and, if denied, then, within 10 days thereafter from the supreme court. Upon the conclusion of an investigation, Counsel shall recommend dismissal, informal admonition of the attorney concerned, the institution of non-disciplinary proceedings for minor misconduct, or the institution of formal disciplinary proceedings before a hearing committee or officer. Counsel's recommendation shall be reviewed by one of the two members of the Board assigned for that purpose. If the initial reviewing member of the Board approves Counsel's recommendation, it shall be implemented. If the reviewing member of the Board disapproves Counsel's recommendation, Counsel may request further review by the other reviewing member of the Board. In the event of such second review of Counsel's recommendation, the decision by the second reviewing member of the Board shall be final. The member or members of the Board who review Counsel's recommendation shall be disqualified in any formal disciplinary proceedings in relation to the same alleged misconduct.

(b) Minor misconduct.

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(3) Subject to the provisions of Rule 2.7(a), Counsel shall, in Counsel's sole discretion, exclusively determine whether a matter constitutes minor misconduct. In that event, Counsel may reach agreement with the respondent to submit the matter to non-disciplinary proceedings. Such proceedings may consist of fee arbitration, arbitration, mediation, lawyer practice assistance, substance abuse recovery programs, psychological counseling, or any other non-disciplinary proceedings authorized by the supreme court. Counsel shall then refer the matter to the agency or agencies authorized by ~~[the court]~~ the supreme court to conduct the proceedings.

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(c) Formal Hearing. Formal disciplinary proceedings shall be instituted by Counsel by filing with the Board a petition which shall be sufficiently clear and specific to inform the respondent of the alleged misconduct. A copy of the petition shall be served upon the respondent in accordance with Rule 2.11(a). Notwithstanding Rule 2.22, if at the time the petition is served, the respondent is engaged in the act of the practice of law as a part of a firm, partnership, corporation or governmental entity or other group,

Counsel shall provide a notice to the respondent's employer of the fact that formal disciplinary proceedings have been filed with the Board. The respondent shall serve his or her answer upon Counsel and file the original with the Board within 20 days after the service of the petition, unless such time is extended by the Board Chairperson. In the event the respondent fails to answer, the charges shall be deemed admitted; provided, however, that a respondent who fails to answer within the time provided may obtain permission of the Chairperson to file an answer if such failure to file an answer was attributable to mistake, inadvertence, surprise or excusable neglect. Following the service of the answer or upon failure to answer, the matter shall, unless the provisions of (e) below apply, be assigned by the Chairperson to a hearing committee or officer. The hearing committee or officer receiving the assignment shall serve a notice of hearing upon Counsel and the respondent, or the respondent's counsel, stating the date, time, and place of the hearing. At every hearing wherein factual issues are to be resolved, the respondent shall have a full opportunity to confront and cross-examine such witnesses presented by Counsel and to present evidence on his or her own behalf. The hearing committee or officer shall, in every case, submit a report containing findings and recommendations, together with a record of the proceedings, to the Board within 30 days after the conclusion of the hearing unless such time is extended by the Board Chairperson for no more than 30 days for good cause shown. The findings of the hearing committee or officer shall be supported by clear and convincing evidence. The hearing committee or officer shall not be bound by the formal rules of evidence, but shall admit only trustworthy evidence. The hearing committee or officer shall not rely upon any evidence outside the formal record in reaching a decision.

(d) Review by Board and Supreme Court. Upon receipt of a report from a hearing committee or officer, the Board will not entertain briefs or oral argument except: (1) within the Board Chairperson's discretion upon application of Counsel or the respondent (submitted within 10 days after service of the report of the hearing committee or officer); or (2) upon a vote of a majority of the Board. If such application is granted or vote occurs, the Board Chairperson shall set the dates for submission of briefs and for any oral argument before the Board. After reviewing the report of the hearing committee or officer, the ~~b~~Board shall promptly either affirm or modify the [recommendation] report of the hearing committee or officer, remand the matter for further proceedings before the hearing committee or officer, or dismiss the petition with the consent of Counsel, provided that no such consent shall be required where the hearing committee or officer recommended dismissal of the petition. In the event the Board determines that the proceedings shall be concluded by informal admonition or private or public reprimand, such admonition or reprimand shall be imposed in accordance with procedures established by the Board.

Unless the Board ~~[shall]~~ dismisses the petition with any required consent of Counsel, remands the petition, or concludes the matter by informal admonition or private or public reprimand, the Board shall promptly submit a report containing its findings and recommendations, together with the entire record, to the supreme court. After the filing of such report, a copy thereof shall be served on the parties in accordance with Rule 2.11(b). ~~[The court]~~ The supreme court will not entertain briefs or oral argument except: (1) within its discretion upon application of the respondent or Counsel (submitted within 10 days after service of the Board's report); or (2) upon request of ~~[the court]~~ the

supreme court. If such application is granted or request is made, [~~the court~~] the supreme court shall set the dates for submission of briefs and for any oral argument before [~~the court~~] the supreme court. In its discretion, [~~the court~~] the supreme court may in all disciplinary cases issue and publish written opinions or by per curiam order adopt and publish the findings and conclusions contained in the written report of the Board.

(e) Elimination or suspension of hearing proceedings. All proceedings before the hearing committee or officer shall be eliminated or suspended (1) where the respondent has filed no answer (and the charges have thus been deemed admitted) because, after due and diligent effort by Counsel, the respondent cannot be located for personal service and does not receive registered or certified mail at any of his or her addresses last known to Counsel; or (2) where Counsel and the respondent at any time subsequent to the filing of a petition file with the Board a stipulation setting forth an admission by the respondent of the facts deemed relevant to a determination of the matter, the disciplinary violations which serve as grounds for discipline, and an agreement as to the recommended form of discipline which should be imposed upon the respondent based upon the admitted violations. The entire record in the case shall thereupon be transmitted directly to the Board for review in accordance with (c) above. The parties may request that the record be supplemented by documentary exhibits. In any event, the Board may accept a request by the parties that the submission of briefs and/or oral argument before the Board be waived. In the case of a stipulation filed by the parties, neither the Board nor the supreme court shall be bound to accept the parties' stipulated factual and legal agreements or recommended disposition, and the Board or [~~the court~~] the supreme court may either decide the matter based upon the factual admissions set forth in the parties' stipulation or may remand the matter for further proceedings before a hearing committee as outlined in (b) above.

2.11 Service.

(a) Service upon the respondent of the petition or order to show cause in any disciplinary disability, or trustee proceeding shall be made by personal service by any person authorized by the Board Chairperson ~~of the Board~~, except that in the event the respondent cannot be found within the state or has departed therefrom, service shall be made by registered or certified mail at the respondent's address shown in his or her registration statement filed pursuant to Rule 17(d) or other last known address.

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2.12. Power to subpoena respondents and witnesses; pretrial proceedings.

Any member of a hearing committee or any hearing officer, in matters before it or them, and Counsel, in matters under investigation by him or her, may administer oaths and affirmations, and compel by subpoena the attendance of the respondent and witnesses and the production of pertinent books, papers and documents. A respondent may compel by subpoena the attendance of witnesses and the production of pertinent books, papers, and documents before a hearing committee or officer after formal disciplinary proceedings are instituted. Writs

If ~~[this court]~~ the supreme court shall determine that the respondent is not incapacitated from practicing law, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent.

* * *

(f) No attorney transferred to inactive status under the provisions of this rule may resume active status until reinstated by order of ~~[this court]~~ the supreme court. Any attorney transferred to inactive status under the provisions of this rule shall be entitled to apply for reinstatement to active status once a year or at such shorter intervals as ~~[this court]~~ the supreme court may direct in the order transferring the respondent to inactive status or any modification thereof. Such application shall be granted by ~~[this court]~~ the supreme court upon a showing that the attorney's disability has been removed and he or she is fit to resume the practice of law. Upon such application, ~~[this court]~~ the supreme court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such qualified medical experts as ~~[this court]~~ the supreme court shall designate. In its discretion, ~~[this court]~~ the supreme court may direct that the expense of such an examination shall be paid by the attorney.

Where an attorney has been transferred to inactive status by an order in accordance with the provisions of (a) above, and, thereafter, in proceedings duly taken, he or she has been judicially declared to be competent, ~~[this court]~~ the supreme court may dispense with further evidence that his or her disability has been removed and may direct his or her reinstatement to active status upon such terms as are deemed proper and advisable.

(g) The filing of an application for reinstatement to active status by an attorney transferred to inactive status because of disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of his or her disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the attorney has been examined or treated since his or her transfer to inactive status and he or she shall furnish to ~~[this court]~~ the supreme court written consent to each to divulge such information and records as requested by court-appointed medical experts.

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2.20. Trustee proceedings.

(a) **Grounds for appointment of trustee.** Whenever an attorney has been transferred to inactive status because of incapacity or disability, or disappears or dies, or has been suspended or disbarred and has not complied with Rule 2.16, or there is other good cause exhibiting an attorney's inability to protect the interests of the attorney's clients, and no partner, executor or other responsible party capable of conducting the attorney's affairs is known to exist, ~~[this court]~~ the supreme court, upon proper proof of the fact, shall appoint an attorney as trustee to inventory the files of the inactive, disappeared, deceased, suspended, or disbarred attorney and to take such action as seems indicated to protect the interests of that attorney's clients.

When appointment of a trustee is warranted, Counsel shall file with the supreme court a motion for appointment of an attorney to serve as trustee. Trustees ~~shall~~ may receive ~~no~~ compensation for their services, ~~but~~ and may be reimbursed for traveling and other expenses incidental to the performance of their duties.

(b) Confidentiality. A trustee shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates, except as necessary to carry out ~~[this Court's]~~ the supreme court's order appointing the attorney to make such inventory and cooperate in investigations by Counsel or the Lawyers' Fund for Client Protection (Fund).

(c) Duties of trustees.

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(2) A trustee appointed under this rule may:

* * *

(ii) take possession of any trust and other bank accounts found or known to exist, determine amounts therein and amounts due the clients for whom the accounts are held, and seek orders from ~~[this court]~~ the supreme court for disbursement of amounts due to the clients;

* * *

(vi) take such further action as ~~[this court]~~ the supreme court directs.

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(e) Upon appointment of a trustee, the attorney whose files are the subject of the trusteeship may, by order of ~~[the court]~~ the supreme court, be suspended from the practice of law in this state until the trusteeship is completed and may be required to pay to the Board all costs ordered and incurred, together with interest at the Hawaii statutory judgment rate.

2.22. Confidentiality.

(a) General rule. The files, records and proceedings of the Board, the hearing committees or officers, and Counsel, as they may relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of an attorney, shall be deemed confidential and shall not be disclosed except under the following circumstances:

(1) As between Counsel, the committees or officers, the Board and ~~[the court]~~ the supreme court in the furtherance of their duties;

* * *

(4) Where permitted by ~~[this court]~~ the supreme court;

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~~[(7) Where this court enters an order transferring the respondent to inactive status pursuant to Rule 2.19; or]~~

~~[(8)](7)~~ Where 90 days have passed since the service on a respondent of a Petition for discipline, unless such time is extended by the Board Chairperson for no more than 45 days for good cause shown.

(8) Where reinstatement proceedings are initiated pursuant to RSCH 2.17(c).

* * *

(d) An affidavit resigning in lieu of discipline or consenting to disbarment submitted pursuant to Rule 2.14 shall be submitted to the hearing

committee or officer, to the Board, and to ~~[this court]~~ the supreme court at any time that the attorney applies for reinstatement. Such affidavit shall also be supplied to an attorney admission or disciplinary authority or judicial selection authority of any jurisdiction in which the attorney affected is admitted to practice or seeks to practice.

* * *

(f) Except as ordered by ~~[this court]~~ the supreme court, or as otherwise provided by these rules, the files, records and proceedings filed with ~~[this court]~~ the supreme court by the Board, by Counsel or by a respondent, as well as any oral argument held before ~~[the court]~~ the supreme court in connection with any disciplinary proceedings, are not confidential, except that in RSCH 2.19 proceedings, a final order transferring an attorney to inactive status shall be a matter of public record, but otherwise, the record of the proceedings shall not be publicly disclosed.

(g) In addition, the Board shall transmit notice of all public discipline imposed by ~~[this court]~~ the supreme court, or transfer to inactive status due to disability, to the National Discipline Data Bank maintained by the American Bar Association.

2.23. Interim suspension.

~~(a) [If at any time during the pendency of an investigation or a disciplinary proceeding, it appears that the continuation of an attorney's authority to practice law is causing or is likely to cause serious harm to the public, Counsel may request the Chairperson of the Board to appoint three Board members to serve on a committee whose function will be as follows:] Upon receipt of sufficient evidence demonstrating that an attorney has committed a violation of the Hawai i Rules of Professional Conduct and poses a substantial threat of serious harm to the public, Counsel may:~~

~~(i) transmit the evidence to the supreme court; and~~

~~(ii) contemporaneously make a reasonable attempt to provide the attorney with notice, which may include notice by telephone, that a request for immediate interim suspension has been transmitted to the supreme court.~~

~~[(1) The committee will issue an Order to Show Cause to the respondent directing him or her to appear before the committee within five days of the service of the Order to Show Cause upon the respondent. At the hearing on the Order to Show Cause, Counsel shall present evidence and/or witnesses to the committee to substantiate his or her allegations that the respondent's continued privilege of practicing law during the pendency of the disciplinary proceedings is causing or is likely to cause serious harm to the public. The respondent shall have the right to appear at the hearing and to present evidence and/or witnesses opposed to the Order to Show Cause.]~~

~~[(2) After conducting the hearing, if the committee concludes that respondent's authority to practice law during the pending disciplinary proceedings is causing or is likely to cause serious harm to the public, the committee shall enter its findings and direct Counsel to file a petition with this court requesting that respondent's license to practice law be immediately suspended pending the outcome of the disciplinary proceedings.]~~

~~[(3) Upon the filing of such a petition with this court, this court shall immediately enter an order directing the respondent attorney to show cause why~~

~~he or she should not be placed on an interim suspension. If no good cause is shown, the court shall enter an order of interim suspension which shall remain in full force and effect until further order of the court.]~~

(b) Upon examination of the evidence transmitted to the supreme court by Counsel and of rebuttal evidence, if any, that the attorney has transmitted to the supreme court prior to the supreme court's ruling, the supreme court may enter an order immediately suspending the attorney, pending final disposition of disciplinary proceedings predicated upon the conduct of causing the harm, or may order such other action as it deems appropriate.

(c) On notice to Counsel, an attorney suspended pursuant to (b) may move for dissolution or modification of the order of suspension, and in that event, the motion shall be heard and determined as expeditiously as justice requires.

(d) An order imposing an interim suspension on an attorney under this rule shall not constitute a suspension of the attorney for the purposes of Rule 2.16 unless ~~[this court]~~ the supreme court shall otherwise order.

DATED: Honolulu, Hawaii, November 23, 2007.